

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
AT&T Petition to Launch a Proceeding)	GN Docket No. 12-353
Concerning the TDM-to-IP Transition)	
)	
NTCA Petition for a Rulemaking to)	GN Docket No. 13-5
Promote and Sustain the Ongoing TDM-)	
to-IP Evolution)	

REPLY COMMENTS OF
WORLDNET TELECOMMUNICATIONS, INC.

WorldNet Telecommunications, Inc. ("WorldNet") respectfully submits reply comments in the above-referenced docket. As set forth in more detail below, WorldNet submits that, to the extent the Commission determines that it can and should take any action with regard to the ongoing TDM-to-IP transition (a result that WorldNet does not believe is appropriate as a matter of either law or policy), the Commission should:

- (i) critically analyze and investigate the claims being made by the incumbent local exchange carriers ("ILECs") in support of proposals that would have a serious and adverse impact on competition;
- (ii) give stakeholders in the transition, like WorldNet, a full and fair opportunity to comment on clear, specific, detailed rules and policies, not the hodge-podge of proposed actions now pending before the FCC in this and other dockets; and
- (iii) remain guided by, and exercise caution not to betray (especially in a uniquely situated place like Puerto Rico), the basic principle established by Congress in the

Telecommunications Act of 1996 ("1996 Act") that the public interest is best served by policies (such as the unbundling of ILEC networks) that create opportunities for competition.

DISCUSSION

By way of introduction, WorldNet is a locally-owned competitive local exchange company serving predominantly small- and medium-sized business customers in Puerto Rico.¹ WorldNet has adhered to the "script" envisioned by Congress in the 1996 Act by starting with the resale of ILEC services and then transitioning to facilities-based service through the use of its own IP network in conjunction with unbundled ILEC transport and unbundled ILEC hybrid and copper loops. As a result, WorldNet has promoted, and WorldNet believes telecommunications consumers in Puerto Rico have realized the benefits of, the three core pro-competitive goals of the 1996 Act:

- reduced pricing (WorldNet is one of the principal competitors at the table for communications projects with much larger players like American-Movil-controlled Puerto Rico Telephone Company and AT&T);
- technological innovation (WorldNet not only deploys advanced broadband services but is launching a next generation cloud computing over broadband bundled technology offering); and
- improved quality of service (WorldNet has a well-documented record of successfully pushing incumbent providers and the local regulatory board to "raise the bar" for quality of performance through the adoption of meaningful standards for the delivery and maintenance of basic and advanced telecommunications services).

As noted, WorldNet has installed an IP switch (an action that was fraught with risk at the time it was taken) that it uses in conjunction with its MPLS-based network to provide broadband and broadband-enabled services throughout Puerto Rico. Moreover, for many of its customers, WorldNet is utilizing existing copper infrastructure leased from the ILEC as unbundled network

¹ Some 4,900 customers, including around 30 municipalities and government agencies, rely on WorldNet as their telecommunications and broadband services provider.

elements to deliver not only a variety of basic services, but also (among other things) bonded Ethernet service at speeds up to 45 Mbps. As such, in the face of the substantial impediments facing competitive entrants, and using the tools provided under the 1996 Act as well as its own entrepreneurial spirit and determination, WorldNet already has made the much-discussed “IP-transition” and is providing consumers in Puerto Rico with quality, advanced services.

In these reply comments, WorldNet does not wish to burden the Commission with a rehash of the previously-filed comments demonstrating why the petitions at issue in this proceeding should be denied. WorldNet, however, does wish to ensure that the record reflects the three basic points summarized above. Moreover, it is important that the Commission have a full appreciation of the adverse impact that this proceeding will have on consumers in Puerto Rico if it results in the elimination or reduction of WorldNet’s access to existing copper facilities.

First, the relief that the petitioners are seeking, if granted, could have the effect of substantially impeding or eliminating competition (which in itself would be inappropriate) based on an unsupported (and unsupportable) set of suppositions. The petitioners attempt to draw a link between carriers’ transmission protocols (the so-called TDM-to-IP transition) and the physical facilities used to carry those transmissions. But there is no such linkage. TDM can be provided over copper (such as POTS service) or over fiber (such as SONET service). IP can also be provided over copper (such as DSL, bonded Ethernet, etc.) or over fiber (such as MPLS). One has nothing to do with the other and to the extent an argument based on the supposed need to facilitate TDM-to-IP transition results in the elimination of ILECs’ legal obligation to unbundle their facilities -- a legal obligation that flows directly from the policy judgments that Congress and the Commission made in the 1996 Act and the rules implementing the Act --

WorldNet believes the Commission should act cautiously and review with a skeptical eye the ILECs' claims.

Second, to the extent that the Commission decides that it can and should take some action with regard to the petitions, the Commission must give stakeholders in the transition, like WorldNet, a full and fair opportunity to comment on specific rulemaking proposals, presented as part of a comprehensive plan. The relief sought by the two petitions that are the subject of this proceeding is, for the most part, general, unspecified, and open-ended. In addition, the petitioners' proposals overlap and, in some measure, conflict with issues and proposals that the Commission is now considering in a number of other dockets. The issues that are at stake here are too complex and important for the Commission to expect stakeholders, like WorldNet, to respond to them in a piecemeal fashion. The Commission must not fall into the paradigm that the petitions are trying to create – that the TDM-to-IP transition is somehow linked to or contingent on a change in the physical facilities used to carry these transmission protocols. As is implicit in the National Broadband Plan, moving forward with a proceeding to “clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnection where efficient”² does not necessarily dictate a particular answer to the separate question of what constitutes an “appropriate balance in [the Commission’s] copper retirement policies.”³

Third, any further action that the Commission takes, or proposes to take in response to the instant petitions (or otherwise) must be consistent with the pro-competitive policies and requirements of the 1996 Act. Many parties commenting in this proceeding have argued that the Commission should not compromise more than a decade of competitive development under the

² National Broadband Plan at 49.

³ *Id.* at 48.

1996 Act by allowing ILECs to effectively eliminate last-mile unbundling obligations in exchange for the generalized promise of increased ILEC last-mile fiber investment. As suggested above, the petitioners' claims regarding the TDM-to-IP transition could effectively eviscerate Section 251(c)(3) of the 1996 Act. More than a decade after its enactment, the most important element of Section 251(c)(3) undeniably is the access that it gives competitors to ILEC last-mile facilities. There are important market sectors (including small- and medium-sized businesses) in which the number of last-mile alternatives to ILEC facilities for competitors are as limited today as they were in 1996. As a result, if ILECs could immunize themselves from last-mile unbundling obligations through the retirement of copper loops (or even just the threat of retirement of those facilities) such a result could have the effect of rendering Section 251(c)(3) of the 1996 Act virtually meaningless and effectively impede or eliminate UNE-based competition as an option under the 1996 Act.

WorldNet submits that the Commission should not enable the petitioners' efforts to engage in an "end run" around the expressed will of Congress. The policy judgments on which Congress relied in framing the 1996 Act and on which the Commission relied in implementing the Act, reflect the carefully balanced consideration given to the arguments for retaining a dominant/monopoly provider environment versus the arguments for promoting competition as the catalyst for best serving the public's fundamental interest in reduced pricing, improved service, and technological innovation. In deciding to tip the balance in favor of competition, and in so doing to rely on unbundling, Congress and the Commission recognized that opening access to incumbent networks with cost-based pricing was the only way to attain the benefits of competition. Whether or not there are instances where, as argued by AT&T, compliance with the 1996 Act and the Commission's implementing rules "chills" ILEC investment, the

Commission does not have the authority nor do the facts or policy arguments compel the Commission to second-guess Congress' thoughtful and longstanding decision to affirmatively choose unbundling and competition.

The requirement in the 1996 Act for last-mile unbundling is not hindering a TDM-to-IP transition in Puerto Rico. Through unbundled ILEC copper and hybrid loops, WorldNet is providing thousands of Puerto Rico consumers with IP-based, broadband services that in many cases would otherwise not be available. In other words, unbundling is a key reason why thousands of Puerto Rico consumers are now using IP-based, broadband services relying heavily on the unbundling of the ILEC's copper facilities. Moreover, while WorldNet has built an IP network using, in part, ILEC copper facilities, the ILEC in Puerto Rico has, to date, resisted IP-to-IP interconnection, claiming when last formally challenged that it has not yet established an IP-based network.⁴ Eliminating or merely disadvantaging WorldNet's existing IP-based service option would do nothing to effectuate a TDM-to-IP transition. Rather, it would serve to put the unilateral power to control network deployment and planning into the hands of WorldNet's principal competitor, and one that has not, at least in Puerto Rico, taken a leadership role in such a transition. The potential to turn back over a decade of WorldNet's hard fought efforts to become a leading IP-based service provider and innovator in Puerto Rico in precisely the way that Congress envisioned is not a result that the Commission should permit.⁵

⁴ The incumbent LEC in Puerto Rico has heretofore resisted IP to IP interconnection, not on the basis of any principled regulatory grounds, but for the practical reasons that they are simply not offering IP capabilities, an admission that wholly undercuts the predicate allegedly established in the mainland upon which the petitions are based. For example, in WorldNet's last interconnection arbitration, see **"Issue 87 - IP Interconnection PRTC [ILEC] Position:** WorldNet's proposal to resolve Issue 87 should be rejected. PRTC does not have an IP switch, and neither PRTC tandem has IP trunking. PRTC does not have an IP connection to anyone."

⁵ WorldNet acknowledges that it is possible that the ILEC in Puerto Rico (or any other particular jurisdiction) may not be inclined or able to retire its copper network for some time. Even so, a Commission ruling giving such ILEC the present or future capacity to unilaterally make the determination to retire copper loops that competitors like WorldNet not only presently use to serve customers but further count on in future business and

In any event, the Commission, to the extent it determines to do anything in response to AT&T's petition, need not sacrifice competition in order to relieve ILECs of the theoretical, and as-yet undocumented, financial burden of an "antiquated" copper network that currently is enabling thousands in Puerto Rico to receive IP-based services. More reasonable and measured options to the simplistic right of removal of copper facilities exist. These include the adoption of thoughtful and appropriate conditions that would for instance give competitors the right to acquire ILEC copper facilities at an appropriately established value. This concept is not presented here as a formal or complete proposal, but rather as an expression of concern that the right to retire copper should not be unfettered, but rather conditioned. Such conditions might depend upon the use of the copper, by competitors or others, and might require various showings depending upon the circumstances. To the extent that Commission considers specific conditions on the retirement of copper facilities, WorldNet reserves the right and would be happy to provide more specific comments on the details of such conditions.

Puerto Rico presently lags behind United States mainland jurisdictions competitively, economically, and technologically, including in the level of broadband penetration. According to the Telecommunications Regulatory Board of Puerto Rico, citing to the Commission's Sixth Broadband Deployment Report

"[A]pproximately 14 to 24 million Americans remain without broadband access capable of meeting' the minimum upload/download speeds required under the Telecommunications Act...[O]ut of the approximately 24 million Americans who live in areas unserved by broadband, 1/6th (almost four million) live in Puerto Rico[T]he Commission must 'take immediate action to accelerate deployment of advanced telecommunications [i.e., broadband] capability by removing barriers to infrastructure investment *and by promoting*

technical planning would still materially and immediately impair competition by, among other things, putting a competitor's network options into the hands of its biggest competitor and potentially diminishing asset value and discouraging investment in competitive providers faced with the prospect of drastic network and business model reconfiguration.

competition in the telecommunications market...” Denying access to broadband, according the Chairman Genachowski, denies citizens of the “transformative power” it offers...⁶

According to a recent survey, as of 2011, some 1,673,610 persons in Puerto Rico, representing 45.6% of the population, are living below the poverty line.⁷ WorldNet’s stakeholders, employees, and representatives agree with Chairman Genachowski that broadband offers a truly “transformative” power to promote economic development make life better for millions on the island. It is WorldNet’s sincere belief that its presence as a competitive alternative and its innovation in broadband, and now cloud computing and technology over broadband, can truly make a difference. WorldNet has done this through the basic tools conferred upon it by the 1996 Act, including unbundled network elements.

Finally, WorldNet encourages the Commission to take a look at what it can and should be doing to encourage or require IP-to-IP interconnection. If the real goal here is to encourage next generation IP deployment, the best way to move this forward is to require IP interconnection, as WorldNet has been seeking to do with the ILEC in Puerto Rico . The Commission should not let ILECs thwart the industry-wide benefits of the TDM-to-IP transition by refusing IP interconnection with competitive providers. It is critical that the Commission recognize and take into consideration the fact that the TDM-to-IP transition that WorldNet has promoted in Puerto Rico is based, in large part, on the availability of unbundled ILEC copper loops. It defies reason to eliminate these established IP-based services in the name of promoting the deployment of IP-based services. Moreover, it would be a perverse result – one that is inconsistent with the basic

⁶ Letter to Marlene Dortch dated March 14, 2011, made on behalf of the Telecommunications Regulatory Board of Puerto Rico.

⁷ U.S. Census Bureau, United States Department of Commerce, Economics and Statistics Administration, “Poverty: 2010 and 2011, American Community Survey Briefs,” Issued September 2012, by Alemayehu Bishaw.

choice made by Congress in the 1996 Act – for the Commission to conclude that the best way to promote innovation in telecommunications markets is not through UNE-based competition, but instead through a grant to ILECs of rights that could have the effect of conferring immunity from competition.

CONCLUSION

WorldNet joins those commenters urging the Commission to deny the petitions now pending in this docket. First, the relief sought is vague and inappropriate for these reasons as set forth above. Second, to the extent that the Commission nonetheless determines to take action with regard to the TDM-to-IP transition, it should ensure that (1) such actions are to foster the development of IP-enabled technologies over all types of facilities; (2) stakeholders, including WorldNet, are afforded a full and fair opportunity to comment on definitive Commission proposals that preserve WorldNet's right to unbundled access to ILEC last-mile facilities; and (3) any such transition reinforces the pro-competitive determinations that are the underpinning of the 1996 Act and the Commission's implementing rules.

Respectfully submitted,

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